

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1092 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

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STATE OF GUJARAT

Versus

RABARI SOMABHAI SHANKERBHAI

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Appearance:

Shri A.G.Uraizee, Additional Public Prosecutor, for the Appellant - State.

Shri R.R.Tripathi, Advocate, for Respondents - accused Nos.1 to 3.

Shri P.B. Bhatt, Advocate, for Respondents - accused Nos. 4 and 5.

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 09/12/96

ORAL JUDGEMENT

The judgment and order of acquittal passed by the learned Special Judge (Atrocity) at Mehsana on 4th August 1992 in Special Atrocity Case No.24 of 1992 is under challenge in this appeal after obtaining leave of this court under Section 378 of the Code of Criminal Procedure, 1973 (the Cr.PC for brief). Thereby the learned trial Judge acquitted the respondents - accused of the offences punishable under Sections 143, 297, 504 and 506 Part II of the Indian Penal Code, 1860 (the IPC for brief), Section 3 (1) (x) & (xiv) of the Scheduled Castes and the Schedules Tribes (Prevention of Atrocities) Act, 1989 (the Atrocities Act for brief) and Section 135 of the Bombay Police Act, 1951 (the BP Act for brief).

2. The facts giving rise to this appeal move in a narrow compass. It is the prosecution case that certain persons belonging to the Scheduled Caste were taking out the funeral procession for cremation of one Rameshbhai Jinabhai Parmar's niece by the name of Kamlaben on 5th August 1991. The funeral procession was going through the road leading to Sagar Cooperative Society situated on the road leading to Kadi to Thol. At that stage, the respondents - accused abused them and hurt their feelings by calling them their caste names and intimidated them for having passed through that route. They got the similar treatment at the hands of the respondents-accused even on their return after performing the cremation ceremony. It is also the prosecution case that, at that stage, the respondents - accused threw sticks on them to cause hurt to them. A typed complaint was filed with the police on the next day, that is, on 6th August 1991, charging in all six persons with the offences punishable under Sections 297, 506 Part II & 504 of the IPC and the relevant provisions contained in Section 3 of the Atrocities Act and Section 135 of the BP Act. That set the prosecution machinery into motion. On completion of the investigation, a chargesheet was filed in the Court of the Special Judge (Atrocity) at Mehsana charging the respondents - accused with the offences punishable under the aforesaid provisions of the IPC, the Atrocity Act and the BP Act. It came to be registered as Special Atrocity Case No.24 of 1992. It may be noted at this stage that, out of the six accused named in the complaint, the chargesheet was filed only against five of them as it was found that one of them was actually on his job at Gandhinagar Power House on the day of the incident. His name was therefore not included as an accused in the chargesheet. The charge against the respondents accused was framed on 20th June 1992 at Exh.22 on the record of

the case. No accused pleaded guilty to the charge. All of them were thereupon tried. After recording the prosecution evidence and after recording the further statement of each respondent - accused under Section 313 of the Cr.PC and after hearing arguments, by his judgment and order passed on 4th August 1992 in Special Atrocity Case No.24 of 1992, the learned Special Judge (Atrocity) at Mehsana acquitted the respondents - accused of the charge levelled against them. That aggrieved the prosecution agency. It has therefore invoked the appellate jurisdiction of this court after obtaining its leave under Section 378 of the Cr.PC for questioning the correctness of the aforesaid judgment and order of acquittal passed by the learned trial Judge.

3. Learned Additional Public Prosecutor Shri Uraizee for the appellant - State has taken me through the entire evidence on record in support of his submission that the learned trial Judge was in error in acquitting the respondents - accused of the charge levelled against them. Learned Additional Public Prosecutor Shri Uraizee for the appellant - State has submitted that the ocular account furnished by the complainant and the eye witnesses examined at trial was a clear pointer to the guilt of the respondents - accused. In that view of the matter, runs the submission of learned Additional Public Prosecutor Shri Uraizee for the appellant - State, the learned trial Judge ought to have come to the conclusion that the case against the respondents - accused was proved beyond any reasonable doubt. As against this, both learned Advocate Shri R.R.Tripathi for respondents accused Nos.1 to 3 and learned Advocate Shri P.B.Bhatt for respondents - accused Nos. 4 and 5 have submitted that the learned trial Judge has carefully scanned and scrutinized the evidence on record and has come to the conclusion that the prosecution could not bring the guilt home to the respondents - accused beyond any reasonable doubt. Both learned Advocates Shri Tripathi and Shri Bhatt for the respective respondents accused have further submitted that the learned trial Judge has found the defence version to have been probabalised and the view taken by the learned trial Judge is a possible view, and as such no interference is called for with the impugned judgment and order of acquittal in accordance with well-settled principles of law governing appeals against acquittal.

4. It may be mentioned at this stage that the learned trial Judge has carefully examined the evidence of the eye witnesses with respect to the incident in question. The learned trial Judge has noted the fact as

transpiring from the oral testimonies of the complainant and certain eye witnesses that the respondents - accused permitted them to go to the crematorium from the road in question passing through their society accepting their implorations. In that view of the matter, the learned trial Judge has doubted the version of the complainant and the other eye witnesses to the effect that they were meted out the same treatment on their return from the crematorium-ground after holding cremation of the complainant's niece. It cannot be gainsaid that, once imploration for permitting access to the crematorium from a particular route is accepted, nobody would harass the persons on their return keeping in mind the normal human behaviour. It was not the case of the complainant and his eye witnesses that the respondents - accused were abnormal persons. The complainant and his associates have not been able to bring on record any material which would go to show that the behaviour of the respondents - accused or any of them was abnormal or in any case not normal human behaviour. I think the learned trial Judge has therefore rightly not believed the prosecution version on that ground alone.

5. The learned trial Judge has also relied on the material on record for coming to the conclusion that the complainant and his group had filed civil litigation against some of the respondents - accused and, with a view to pressurising certain respondents - accused with respect to the civil litigation between the parties, a false case against the respondents - accused might have been filed. The material on record clearly goes to show that the complainant and his group had filed a litigation in the Mamlatdar's court and also a civil litigation in the competent civil court against some of the respondents - accused. It is thus clear that the parties were involved in long-drawn battle in the form of civil litigations. It would not be unnatural for parties to pressurise the other side to accept their terms when they are drawn in civil litigations. Use of any means of tactics, fair or foul, is permissible in any battle or war is well-accepted philosophy propounded by that great political thinker Chanakya. In that view of the matter, the view taken by the learned trial Judge is a possible view. The learned trial Judge has found the defence version to be a probable version.

6. The conclusion reached by the learned trial Judge that a false case might have been filed against the respondents - accused is also borne out from the evidence on record. It transpires from the oral testimony of the investigating officer examined as prosecution witness

No.6 at Exh.44 that one person shown as the accused in the complaint was found in the course of investigation to be actually on his job at the relevant time in the Power House at Gandhinagar. It thus becomes clear that that person was falsely implicated in the complaint. The defence has brought on record one certificate from the Science College at Kalol showing the presence of respondent - accused No.1 between 11.00 and 5.00 in college on 5th August 1991, that is, the day of the incident. It thus becomes clear that a false complaint was filed even against respondent accused No.1. The defence has shown that respondent accused No.5 was serving in a school. He was present on his job for the whole day in the school at Kadi on the day of the incident as transpiring from the certificate issued by the school authorities. It thus becomes clear that he was also falsely implicated in the criminal case. The evidence of the investigating officer at Exh.44 also clearly shows that, out of the persons shown as eye witnesses of the incident in the complaint, at least one person did not name any of the respondents - accused as involved in the case. The investigating officer at Exh.44 has further stated that, out of the five witnesses whose statements were recorded, the name of respondent accused No.2 was not found involved. It thus becomes clear that at least a false case was filed against three of the five respondents - accused. In view of these evidences on record, the view taken by the learned trial Judge to the effect that a false case might have been filed against the respondents - accused to pressurise them with respect to the civil litigation between the parties is a possible view. According to well-settled principles of law governing acquittal appeals, this court cannot and need not interfere with the judgment and order of acquittal passed by the learned trial Judge in such circumstances.

7. In view of my aforesaid discussion, I am of the opinion that the impugned judgment and order of acquittal calls for no interference by this court in this appeal.

8. In the result, this appeal fails. It is hereby dismissed.

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